

AMENDED IN SENATE JULY 10, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 7, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 2505**

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**Introduced by Assembly Member Brownley**  
**(~~Coauthor: Assembly Member Huffman~~ Coauthors: Assembly**  
**Members Huffman and Ma)**

February 21, 2008

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An act to add Article 10.4.1 (commencing with Section 25214.25) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2505, as amended, Brownley. Hazardous waste: polyvinyl chloride packaging container.

Existing law, the Toxics in Packaging Prevention Act, prohibits a manufacturer or supplier, as defined, from offering for sale or for promotional purposes in this state a package or packaging component that includes specified regulated metals and prohibits a person from offering for sale or for promotional purposes in this state a product in a package that includes those intentionally introduced regulated metals. A violation of the hazardous waste control laws, including the act, is a crime.

This bill would prohibit a person, on and after January 1, ~~2010~~ 2013, from manufacturing, importing, selling, or distributing in commerce in

this state a *rigid* polyvinyl chloride packaging container, as defined, *and would prohibit, on and after January 1, 2015, a person from manufacturing, importing, selling, or distributing in commerce in this state a flexible polyvinyl chloride packaging container, as defined.* ~~A person who manufactures, imports, sells, or distributes a plastic packaging container, commencing January 1, 2010, would be required to furnish a certificate of compliance to the purchaser of the plastic packaging container. The purchaser of the plastic container would be required to retain the certificate of compliance for each plastic packaging container for as long as the plastic packaging container is in use by the purchaser.~~

The bill would provide that a person who violates this prohibition is not subject to the criminal penalties imposed pursuant to the hazardous waste control laws and instead would be liable for an administrative or a civil penalty not to exceed \$2,500 per day for each violation. The bill would require the collected ~~civil~~ penalties to be deposited in the Hazardous Waste Control Account, for expenditure by the ~~department~~ *Department of Toxic Substances Control*, upon appropriation by the Legislature, to implement and enforce this prohibition.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Polyvinyl chloride (PVC) packaging poses an environmental
- 4 and human health risk throughout its life cycle.
- 5 (b) PVC production involves the use of vinyl chloride, a known
- 6 carcinogen, which may pose a health hazard to those in and around
- 7 manufacturing facilities.
- 8 (c) Many types of PVC packaging contain phthalates, a class
- 9 of chemicals that have hormone-disrupting effects on humans.
- 10 (d) PVC packaging has been found by the Toxics in Packaging
- 11 Clearinghouse of the Council of State Governments and others to
- 12 have a high incidence rate of lead and cadmium heavy metal
- 13 contamination.
- 14 (e) The combustion of PVC emits dioxins.
- 15 (f) PVC packaging is recycled at very low levels.

(g) PVC is a problematic contaminant in the recycling stream of other, more abundant, nontoxic plastic resins, preventing municipalities from accepting greater quantities of packaging for recycling and preventing municipalities from achieving higher landfill diversion rates.

(h) When disposed of in a solid waste landfill or as litter, PVC packaging may leach its toxins into the surrounding groundwater.

(i) Recognizing the threat leached toxins pose on marine wildlife, the Ocean Protection Council recently passed a resolution calling for the banning of vinyl chloride in plastic packaging.

(j) Alternatives to polyvinyl chloride packaging are abundant, affordable, and are already competitive in the marketplace.

SEC. 2. Article 10.4.1 (commencing with Section 25214.25) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.4.1. Polyvinyl Chloride Packaging

~~25214.25. (a) For the purposes of this article, unless the context clearly requires otherwise, “polyvinyl chloride packaging container” means a container that is used to contain, hold, protect, or display another product, alone or in combination with paperboard or other materials, that may be flexible or rigid, and to which all of the following applies:~~

~~(1) The container is comprised predominantly of polyvinyl chloride plastic resin.~~

~~(2) The container has the shape of a sack, cup, bottle, bowl, box, clamshell, or other package shape, including a blister pack.~~

~~(b) “Polyvinyl chloride packaging container” does not include any of the following:~~

~~(1) A container that is used to contain a petroleum-based product, including a fuel, a lubricant, a fuel additive, or other petroleum-based product used on or in motor vehicles.~~

~~(2) A container that is used to contain a prescription or over-the-counter human or veterinary drug, including, but not limited to, a drug as defined in Section 109925 or as defined in Section 321 of Title 21 of the federal Food, Drug, and Cosmetic Act.~~

~~(3) A container that is used to contain a medical device, as defined in Section 109920.~~

1     ~~(4) A packaging container or packaging component used solely~~  
2     ~~in transportation and not made available to consumers.~~

3     ~~25214.26. On and after January 1, 2010, a person shall not~~  
4     ~~manufacture, import, sell, or distribute in commerce in this state~~  
5     ~~a polyvinyl chloride packaging container.~~

6     ~~25214.27. (a) Commencing January 1, 2010, each person who~~  
7     ~~manufactures, imports, sells, or distributes a plastic packaging~~  
8     ~~container shall furnish a certificate of compliance to the purchaser~~  
9     ~~of the plastic packaging container certifying that the plastic~~  
10    ~~container is in compliance with the requirements of this article.~~  
11    ~~The certificate of compliance shall be signed by the person with~~  
12    ~~authority who first comes into possession in the state of, or who~~  
13    ~~manufactures in the state, the plastic packaging container. A copy~~  
14    ~~of the certificate of compliance shall be kept on file by the person~~  
15    ~~who manufactures, imports, sells, or distributes the plastic~~  
16    ~~packaging container.~~

17    ~~(b) A purchaser of a plastic packaging container subject to~~  
18    ~~subdivision (a) shall retain the certificate of compliance for each~~  
19    ~~packaging container for as long as the plastic packaging container~~  
20    ~~is in use by the purchaser. For the purpose of this subdivision,~~  
21    ~~“purchaser” does not include the end user of the plastic packaging~~  
22    ~~container.~~

23    ~~(c) The person who manufactures, imports, sells, or distributes~~  
24    ~~a plastic packaging container shall provide to the department, upon~~  
25    ~~request, a copy of the certificate of compliance for the plastic~~  
26    ~~packaging container requested.~~

27    ~~(d) If a person who manufactures, imports, sells, or distributes~~  
28    ~~a plastic packaging container subject to subdivision (a) reformulates~~  
29    ~~or creates a new plastic packaging container, the person shall~~  
30    ~~provide the purchaser with an amended or new certificate of~~  
31    ~~compliance for the reformulated or new plastic packaging~~  
32    ~~container.~~

33    ~~25214.25. For the purposes of this chapter, the following terms~~  
34    ~~have the following meanings:~~

35    ~~(a) “Flexible polyvinyl packaging container” means a container~~  
36    ~~that is used to contain, hold, protect, or display another product,~~  
37    ~~alone or in combination with paperboard or other materials, where~~  
38    ~~all of the following apply:~~

39    ~~(1) The container is composed predominantly of polyvinyl~~  
40    ~~chloride plastic resin.~~

1     (2) *The container has the shape of a sack, pouch, or other*  
2 *packaging shape, including a shrink or stretch wrap.*

3     (3) *The container has a flexible shape or form.*

4     (b) (1) *“Rigid polyvinyl chloride packaging container” means*  
5 *a container that is used to contain, hold, protect, or display another*  
6 *product, alone or in combination with paperboard or other*  
7 *materials, where all of the following apply:*

8         (A) *The container is composed predominantly of polyvinyl*  
9 *chloride plastic resin.*

10        (B) *The container has the shape of a cup, bottle, bowl, clamshell,*  
11 *or other packaging shape, including a blister pack.*

12        (C) *The container has an inflexible or finite shape or form that*  
13 *is capable of maintaining its shape while holding other products.*

14     (2) *For purposes of this subdivision, a plastic package has an*  
15 *inflexible or finite shape or form if it meets both of the following*  
16 *requirements:*

17         (A) *It has essentially the same shape empty as full. For purposes*  
18 *of this subparagraph, a plastic package has the same shape empty*  
19 *as full even if it is designed to be folded or collapsed into a more*  
20 *compact form when not holding a product.*

21         (B) *It is not flexible plastic packaging composed of film plastic,*  
22 *including, but not limited to, a sack, pouch, or bubble, shrink, or*  
23 *stretch wrap.*

24     (c) *“Rigid polyvinyl chloride packaging container” and “flexible*  
25 *polyvinyl chloride packaging container” do not include any of the*  
26 *following:*

27         (1) *A container that is used to contain a petroleum-based*  
28 *product, including a fuel, lubricant, fuel additive, or other*  
29 *petroleum-based product used on or in motor vehicles.*

30         (2) *A container that is used to contain a prescription or*  
31 *over-the-counter human or veterinary drug, including, but not*  
32 *limited to, a drug as defined in Section 109925 or as defined in*  
33 *Section 321 of Title 21 of the federal Food, Drug, and Cosmetic*  
34 *Act.*

35         (3) *A container that is used to contain a medical device, as*  
36 *defined in Section 109920.*

37         (4) *A packaging container or packaging component used solely*  
38 *in transportation and not made available to consumers.*

1 (5) *A container that is used solely for the transportation and*  
2 *protection of a building material, including, but not limited to,*  
3 *windows and related products used in residential construction.*

4 25214.26. (a) *On and after January 1, 2013, a person shall*  
5 *not manufacture, import, sell, or distribute in commerce in this*  
6 *state a rigid polyvinyl chloride packaging container.*

7 (b) *On and after January 1, 2015, a person shall not*  
8 *manufacture, import, sell, or distribute in commerce in this state*  
9 *a flexible polyvinyl chloride packaging container.*

10 ~~25214.28.~~

11 25214.27. (a) Notwithstanding any other provision of this  
12 chapter, a person who violates this article shall not be subject to  
13 any criminal penalties imposed pursuant to this chapter and shall  
14 only be subject to the *administrative or civil* penalty specified in  
15 subdivision (b).

16 (b) (1) A person who violates this article shall be liable for an  
17 administrative or a civil penalty not to exceed two thousand five  
18 hundred dollars (\$2,500) per day for each violation. That  
19 administrative or civil penalty may be assessed and recovered in  
20 an administrative action filed with the Office of Administrative  
21 Hearings or in a civil action brought in any court of competent  
22 jurisdiction.

23 (2) In assessing the amount of an administrative or a civil  
24 penalty for a violation of this article, the presiding officer or the  
25 court, as applicable, shall consider all of the following:

- 26 (A) The nature and extent of the violation.  
27 (B) The number of, and severity of, the violations.  
28 (C) The economic effect of the penalty on the violator.  
29 (D) Whether the violator took good faith measures to comply  
30 with this article and the time these measures were taken.  
31 (E) The willfulness of the violator's misconduct.  
32 (F) The deterrent effect that the imposition of the penalty would  
33 have on both the violator and the regulated community as a whole.  
34 (G) Any other factor that justice may require.  
35 (c) Civil *and administrative* penalties collected pursuant to this  
36 article shall be deposited in the Hazardous Waste Control Account,  
37 for expenditure by the department, upon appropriation by the  
38 Legislature, to implement and enforce this article.

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